

# WORLD TRADE ORGANIZATION

**WT/GC/W/139**

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**General Council**

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## **PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE**

General Council Discussion of the Singapore Work Program Issues  
and Other Issues of Concern to Members Pursuant to Paragraphs 9(b) and (d)

*Communication from the United States*

The following communication, dated 27 January, has been received from the Permanent Mission of the United States.

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This informal session of the General Council will be Members' first opportunity to identify issues of concern with respect to paragraphs 9(b) and (d) of the May 1998 Ministerial Declaration. Paragraphs 9 (b) and (d) respectively require the Council to prepare recommendations for the 1999 ministerial concerning "...other possible future work on the basis of the work program initiated at Singapore; and recommendations arising from consideration of other matters proposed and agreed to by Members concerning their multilateral trade relations." This meeting marks the completion of the initial "issue identification" exercise undertaken by Members to outline issues that should be the subject of preparations for the Ministerial Conference.<sup>1</sup> The preparatory process devised in May is flexible enough to accommodate additional issues being raised as the process moves forward. The United States presents its views based on our on-going domestic consultations.

In February, the Council will set the schedule for submission of detailed proposals by Members so that recommendations can be developed on the scope, structure and time frames of further work to be

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<sup>1</sup>In WT/GC/W/107, the United States raised issues arising from the implementation of existing Agreements and commitments (Agriculture, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Services, Trade-Related Intellectual Property (TRIPS), Customs Valuation, Rules of Origin, Preshipment Inspection, Market Access/Tariffs, Trade-Related Investment Measures (TRIMS), Subsidies and Countervailing Measures, and Textiles and Clothing). WT/GC/W/115, submitted by the United States in November, addressed the issues subject to further negotiation post-1999 (agriculture and services) and the built-in agenda work mandated in the areas of TRIPS, Subsidies and Countervailing Measures, TRIMS, and the Trade Policy Review (TPR). The e/commerce work program is to be completed in July 1999 and is expected to feature as an element of the forward work program in the WTO.

agreed at the WTO's Third Ministerial Conference. In this regard, the United States looks forward to the convening of the High Level Symposium on Trade and the Environment and Trade and Development in March as an integral part of the preparatory process for the Ministerial. Such discussions will provide important background to the Council's consideration of issues in these areas. Finally, the General Council will receive an interim report in March on electronic commerce, pursuant to decisions taken as a result of the May 1998 Ministerial Decision on Electronic Commerce.

General Council consensus has emerged that the work already assigned to the WTO, either for negotiations or review, must go forward on schedule and that existing WTO Agreements must be implemented fully and work programs respected. Two areas are addressed in this paper: (1) identification of substantive negotiating or work program issues for the WTO's agenda; and (2) institutional improvements in the area of openness and consultation with other international organizations and NGOS. This latter element should facilitate development of consensus for the ministerial agenda and the WTO's future operation. Attention to these important institutional concerns will lead to a stronger trading system that shuns resort to bribery and corruption in international trade transactions and promotes the rule of law.

## **I. SINGAPORE WORK PROGRAM ISSUES - PARAGRAPH 9(B)**

### **A. WORKING GROUP ON TRADE AND INVESTMENT**

In its earlier submissions, the United States raised a concern in respect of the timely implementation by all WTO Members of the TRIMS Agreement's obligations and this issue continues to preoccupy our views on investment-related measures in WTO.

The Singapore-originated Working Group's examination of the relationship between trade and investment has been both interesting and informative. The Working Group's consideration of a full range of investment issues has been valuable to identify the concerns of Members. The extension of the Working Group's analytic work should provide the opportunity to determine what, if any, further work should be recommended in this area. Given the decision to extend the mandate of the Working Group, the United States reserves the right to revert later to the issue of whether it would be appropriate to forward specific recommendations to the Ministerial Conference in this area of our work.

### **B. WORKING GROUP ON TRADE AND COMPETITION POLICY**

This Working Group has provided the first forum in which WTO Members have been able to explore broadly the concepts of competition policy and to consider how competition policy and the work undertaken by competition policy officials relates and contributes to WTO principles and objectives. The Working Group's consideration of the issues to date has been valuable to identifying the concerns of Members, and its extension should help further consideration to determine what, if any, further work should be recommended in this area. Pending the outcome of the more tightly focused work to be undertaken in the Group, the United States believes it would be premature to discuss possible recommendations to the Ministerial Conference.

### **C. WORKING GROUP IN TRANSPARENCY IN GOVERNMENT PROCUREMENT**

At Singapore, Ministers established a Working Group on Transparency in Government Procurement and mandated that it conduct a study on transparency and develop elements for an appropriate agreement. The Working Group currently is poised to make a timely and important contribution to the

broader effort underway in international organizations to establish principles of transparency, and to promote regulatory reform and good governance in government decision making.

The financial crisis has underscored the urgent need for all countries to establish an environment where procurement decisions are made on the basis of ensuring the best value for money, utilizing a transparent set of procedures. Work is sufficiently advanced to produce a multilateral transparency agreement for Ministerial approval in 1999. Such an achievement would be a major contribution to national and international efforts to establish an open and competitive environment for governments to make procurement decisions. This goal, we believe, should be broadly shared as a means of: (1) addressing irregularities and misallocation of resources to the detriment of important social needs; (2) promoting fiscal and financial stability; and (3) minimizing the potential for bribery and corruption.

The United States recognizes that some trading partners may be concerned about the implications of such an agreement for work underway in the WTO regarding improvement of the Agreement on Government Procurement, or the work program established under the GATS auspices. Specifically, we know that some question whether a multilateral transparency agreement would impose requirements beyond transparency (e.g., the elimination of national preference policies). These are not appropriate elements for a transparency agreement. Moreover, completion of a transparency agreement should not prejudice positions with respect to other WTO activities in the area of procurement.

- The Council should support Working Group efforts to develop an agreement for Ministerial approval in December 1999, recognizing that such a free-standing multilateral agreement would neither prejudice in any way participation in the plurilateral Government Procurement Agreement (GPA), nor call into question the maintenance of national preference policies – effectuated through transparent procurement methodologies – that a Member may deem necessary to achieve particular social or economic development goals.

#### A. TRADE FACILITATION

The United States agrees with others that the Council's recommendations to the Third Ministerial Conference should address the WTO's contribution to resolving problems of "trade facilitation." This is based on our consultations domestically and our assessment of the work conducted thus far under the auspices of the Council on Trade in Goods (CTG). The CTG has held a seminar and a series of informal discussions -- including with the private sector and other international organizations -- in order to identify problems of real concern and the activities underway in other international organizations. A wide range of barriers was identified, including customs-related difficulties, such as barriers presented by the ways in which preshipment inspection regimes presently operate, arbitrary customs valuation which already is illegal under the Valuation Agreement, difficulties for express deliveries, the general absence of transparent procedures, unwarranted delays in getting goods released, and the potential for corruption in the absence of transparency and automation in customs administrations. The CTG's next discussion will be critical in the development of the issues. It will focus on relevant elements of various WTO Agreements, the role of electronic commerce and the link between economic development and the trade facilitation environment.

The arguments for additional WTO action in this area are compelling, given the undeniable link between economic development and improvements in the trade facilitation environment. In a global economy that operates with just-in-time delivery and just-in-time distribution, a transparent system that allows rapid release of goods is a necessity for expanding economic output. Manufacturers need inputs, and investors need to know that sourcing plans and operations will not be subject to interference because

of difficulties in customs clearance. Improvements in the administration of customs regimes address the potential for arbitrary decision making and corruption.

- The Council should ensure that any recommendations for new work on trade facilitation will build on and complement, rather than delay, implementation of trade facilitation-related elements that are already within the WTO, such as Articles VIII and X of the GATT 1994, the Agreements on Customs Valuation, Rules of Origin, Preshipment Inspection and Technical Barriers to Trade (Standards).<sup>2</sup>
- The Council should examine whether its recommendations should be limited to the classic definition of trade facilitation – which refers to the manner in which the trade transaction process for goods is administered by governments, particularly customs administrations -- or be more broadly focused.

#### **IV. CONSIDERATION OF OTHER MATTERS TO BE AGREED -- PARAGRAPH 9(D)**

##### **A. INDUSTRIAL MARKET ACCESS LIBERALIZATION**

The United States is prepared to work with other delegations to consider how further industrial tariff negotiations could be accommodated in the WTO's forward agenda and the appropriate modalities for undertaking further negotiations.<sup>3</sup> The United States supports the submission and presentation made by New Zealand, on behalf of APEC members, which challenges WTO members to finalize, by the time of the 1999 Ministerial, the liberalization initiatives in the areas of: chemicals, environmental goods, energy-related goods, fish, forest products, gems and jewelry, medical and scientific equipment, and toys. We look forward to consulting with other WTO Members on the details of these initiatives, and on a longer term negotiating program for tariffs, post-1999.

- The Committee on Market Access should advise the Council of its progress to date in preparing for further market access negotiations.
- WTO Members or accession applicants that are not APEC Members, should advise the Secretariat and the New Zealand Representative of their interests in the initiatives outlined in the APEC submission.

##### **A. TRADE AND LABOR STANDARDS**

Ministers, acting on behalf of the Ministerial Conference at Singapore in 1996, renewed their commitment to the observance of internationally recognized core labor standards. They drew attention to the work of the International Labor Organization (ILO) and the collaboration between the WTO and ILO Secretariats. While the Singapore Declaration was an important initial step, more attention to the intersection of trade and labor standards is warranted as governments and industries wrestle with the complex issue of globalization and adjustment.

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<sup>2</sup> See WT/GC/W/107 regarding action needed to ensure effective implementation of these Agreements.

<sup>3</sup> WT/GC/W/107 focused on the issues in the Market Access Committee related to the loose-leaf program and the development of the Integrated Data Base (IDB), both of which are essential to exploring various approaches to further broad-based tariff liberalization.

Since Singapore, there have been important developments in the ILO on trade and core labor standards and child labor, among other issues. Ministers at Singapore acknowledged that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of core labor standards.

- The Council should recognize that important trade-related issues arising out of the effort to promote observance of core labor standards are currently under examination in the ILO, OECD and other fora, but have thus far not been considered by the Members of the world's main trade organization, the WTO. We believe that a recommendation should be forwarded to the Ministers for the establishment of a forward work program in the WTO that would address trade issues (e.g., abusive child labor, the operation of export processing zones, etc.) relating to labor standards and where Members of the WTO would benefit from further information and analysis on this relationship and developments in the ILO. Provision should be made to address this important relationship at the High Level Meeting on Development in March, drawing upon available analysis.

#### A. INSTITUTIONAL ISSUES: STRENGTHENING THE FUNCTIONS OF THE TRADING SYSTEM

A number of systemic issues require Council action as part of the preparations for the 1999 Ministerial, beyond the issues raised in the context of Dispute Settlement and the review that is due to conclude in July.<sup>4</sup> They include enhancing the transparency of the WTO and its operations, providing for appropriate interaction with international organizations and NGOS before, during, and after the Third Ministerial Conference, and ensuring that provision is made for the participation of applicants in the process of accession to follow developments in the forward work program. Council attention now should set the stage for systemic reforms in the WTO on an on-going basis as part of the post-1999 agenda. There are currently 133 WTO members, with accessions pending for another 31. This substantial increase in membership anticipated over the next few years along with the expansion of the range of issues the WTO addresses should renew consideration of a management board, as part of the post-1999 agenda.

### 1. Transparency/Openness of the WTO

#### (a) Access to Information:

The United States is committed to obtaining improvements in the WTO's operation to address the lack of transparency that is limiting both opportunities and support for trade expansion and the WTO. It is possible to address these problems while respecting the government-to-government character of the WTO and its operations. Consultations to date reveal two important concerns: (1) the perceived lack of commitment by Members to making the WTO's operation more open and transparent is a major obstacle to building public support for further trade liberalization and confidence in the WTO; and (2) lack of information is limiting opportunities to engage in trade (such as: information that is not provided despite the fact that it is required by existing agreements; information that would expedite customs transactions and procedures; procurement bids; or information that would address the interests of potential investors about the country's trade regime).

- The Council has before it a draft decision on circulation and derestriction of documents that should be adopted at the February 1999 General Council meeting. The decision provides for more

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<sup>4</sup> The United States presented its views on the main issue to be addressed in the DSU review in Job No. 5835, DSU/12 (29 October 1998).

timely access to WTO documents, including the release of the findings and conclusions of the dispute settlement reports as soon as they are available in all three WTO languages. Urgent action in this area is needed to restore credibility to the WTO dispute settlement process.<sup>5</sup>

- The United States renews its earlier suggestion that Members consider whether in some cases the transparency and notification provisions could be revised to be more responsive to the needs and interests of stakeholders while being less of an administrative burden to those providing information.
- The review of the Trade Policy Review Mechanism, to be concluded before the end of 1999, provides an excellent, on-going means to consult, share information and maximize resources.

(a) Relations with Nongovernmental Organizations:

The WTO has made important improvements to ensure better communications with the NGO community in a variety of areas. There is now an Internet WEB page where information can be shared and an active outreach program undertaken by the Director General. The two High Level Meetings to be convened in March will have the benefit of NGO participation. It is appropriate that the WTO explore various types of cooperation with the NGO community as we prepare for the Ministerial, drawing on the experiences of national governments and their various approaches, as well as other international organizations.

- We encourage continued efforts by the WTO Secretariat and the Members to explore various approaches to consultations with stakeholders. This should enable the Council to make recommendations with respect to the organization of the Ministerial Conference and institutionalization of consultative mechanisms for the WTO.
- WTO Members should be invited to summarize their various consultative programs and mechanisms and distribute this information by the time of the formal General Council meeting in February.

(a) Relations With Other International Organizations:

The General Council has pending before it requests for observer status from a number of international organizations. Granting observership should facilitate cooperation between the WTO and these organizations and their Secretariats. By way of example, the work of the OECD in the field of agriculture was and remains important to the Agreement on Agriculture. Similarly, the OECD's Convention on Bribery<sup>6</sup>, in addition to the work on regulatory reform and governance principles are relevant to the WTO's work in a number of areas, including in trade facilitation and transparency in

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<sup>5</sup> The decision would not, in any way, modify the DSU. Provisions on circulation and derestriction were agreed in July 1996; the Council decision would build on this decision.

<sup>6</sup> The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on December 17, 1997, includes all OECD Countries (Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States, plus 5 non-member countries (Argentina, Brazil, Bulgaria, Chile and the Slovak Republic).

government procurement. The ILO has devoted substantial analytical effort to the issues of development and labor standards, as noted by Ministers in Singapore. UNCTAD continues to support work on a variety of issues before the WTO. Moreover, the financial crisis brought into focus the important role that adherence to WTO rules, fundamental principles of transparency and due process play in the restoration of economic growth in WTO Member and applicants' economies.

With respect to the International Financial Institutions, pursuant to the Marrakech Declaration, the Heads of the IMF, World Bank and WTO (and their staffs) have initiated activities to broaden and deepened the process and substance of coordinating international economic policy making.<sup>7</sup> The Director General has already initiated a program of closer cooperation with the International Financial Institutions. The Council needs to agree on an appropriate methodology to address this problem, taking into account the issue of reciprocity, so that the WTO and its Members may benefit from the work and expertise of these international organizations as we develop the WTO's forward agenda. This may lead to additional agreements regarding cooperation and increased liaison activity.

- The Chairman of the Council, as a matter of priority, should undertake consultations so that the upcoming General Council meetings can take action to expand the number of international organizations that may be observers to the WTO Councils and Committees. In the view of the United States, progress can be made in this regard if we can agree that, as a starting point WTO should offer observer status where requested: (a) to all intergovernmental organizations with universal membership; and (b) to those organizations or specific agencies within organizations which are demonstrably principally economic in nature.
- Recognizing that we remain in the midst of the most serious international financial challenge since World War II and the urgent need to address the issue of coherence, Members should strengthen the WTO's relations with the International Financial Institutions (IFI's) and explore a range of options that would support closer cooperation and increased liaison activity.

## **1. Trade and Environment**

The Preamble of the WTO Agreement sets forth sustainable development as a central objective of the work of the WTO. This objective must be taken into account in all aspects of our activities. The Committee on Trade and Environment has done important work in identifying and exploring issues that arise at the interface between trade and environment. Related issues have also arisen in various other WTO Committees, demonstrating how closely the work of the WTO relates to environmental issues. We look forward to the High Level Symposium on Trade and Environment which we anticipate will provide fresh and valuable input to our work in this area and help in framing a vision for future work.

- The Council should emphasize that the WTO's forward agenda must contribute to sustainable development, including in particular maintaining and improving the levels of protection of the environment. It should also affirm that nothing in the forward agenda of the WTO will in any way compromise the rights of countries to protect health, safety and the environment from risk at levels which they deem appropriate. The Council should emphasize the need for continued cooperation and coordination between trade and environmental policy makers. The forward agenda must take into account the lessons that have been learned with respect to trade and environment in the CTE

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<sup>7</sup> WT/GC/13 provided a report by the Director General on coherence, including the identification of a number of mutually supportive activities to support the WTO.

and other relevant committees of the WTO, and will benefit from the important discussions that will take place in the High Level Symposium on Trade and Environment.

## **1. Technical Assistance**

In the discussions regarding implementation, the United States identified a number of areas where further technical assistance is required and available, but Member governments do not appear to be taking advantage of such resources to fulfill the desired results of facilitating implementation. This continues to be a major concern. A second area of concern relates to the increasing need of countries to develop the institutional infrastructure to maintain an open, transparent, WTO-consistent trade regime.

The Committee on Trade and Development has played an important role in monitoring the technical assistance activities now underway, in particular for the least-developed countries. Although the WTO Secretariat has signed cooperation agreements with a number of international organizations, the WTO Secretariat estimated that it spent over 20% of its budget on technical assistance activities last year. Rationalization and coordination of the technical assistance provided to Members and accession applicants are needed. The materials prepared for the High-Level Meeting on Least Developed were helpful to governments as they designed their own national technical assistance programs.

- Beyond the immediate needs related to implementation, the WTO should reevaluate its program of technical assistance in light of programs provided by other international institutions, and at the national level, with the aim of taking a more integrated and coordinated approach among members and institutions.
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